

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:

0 1 — 0 1 6

2. STATE:

Minnesota

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
August 7, 2001

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

1902(a)(11)(A) & 1902(a)(22)(C); 42 CFR 431.615

7. FEDERAL BUDGET IMPACT:

a. FFY '01 \$ 1,366

b. FFY '02 \$ 8,200

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Att. 4.16-A, Agreement #2, pp. 1-8

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):
same

10. SUBJECT OF AMENDMENT:

Agreement with Minnesota Department of Health for Title XIX Responsibilities Relating to
Institutions

11. GOVERNOR'S REVIEW (Check One):

☒ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ OTHER, AS SPECIFIED:

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:

Mary B. Kennedy

13. TYPED NAME:

Mary B. Kennedy

14. TITLE:

Medicaid Director

15. DATE SUBMITTED:

9/26/01

16. RETURN TO:

Stephanie Schwartz
Minnesota Department of Human Services
444 Lafayette Road North
St. Paul, Minnesota 55155-3853

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

9-27-01

18. DATE APPROVED:

10/31/01

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

August 7, 2001

20. SIGNATURE OF REGIONAL OFFICIAL:

Cheryl A. Harris

21. TYPED NAME:

Cheryl A. Harris

22. TITLE:

Associate Regional Administrator
Division of Medicaid and Children's Health

23. REMARKS:

SEP 27 2001

DMCH - MI/MN/WI

MINNESOTA
MEDICAL ASSISTANCE

Federal Budget Impact of Proposed State Plan Amendment TN 01-16
Attachment 4.16-A, Agreement #2

As noted in the cover letter, attached, this State plan amendment is the current agreement between the Minnesota Departments of Human Services and Health governing specific Title XIX responsibilities that related to institutions.

The estimated federal budget impact is \$1,366,666 for Federal Fiscal Year 2001 and \$8,200,000 for Federal Fiscal Year 2002.

STATE OF MINNESOTA

INTERAGENCY AGREEMENT #

INTERAGENCY AGREEMENT is made by and between the MINNESOTA DEPARTMENT OF HUMAN SERVICES (hereinafter referred to as "DHS") and the MINNESOTA DEPARTMENT OF HEALTH (hereinafter referred to as "MDH").

WITNESSETH:

WHEREAS, DHS AND MDH have mutual and individual responsibilities relating to: the survey and certification of nursing facilities (hereinafter referred to as "NFs"), intermediate care facilities for people with developmental disabilities (hereinafter referred to as "ICFs/MR"), and nursing facility/institutions for mental diseases (hereinafter referred to as "NF/IMDs"); the quality and/or medical review in each Medicaid (hereinafter referred to as "MA")-certified NF and NF/IMD; the classification for the reimbursement of all residents in Medicaid-certified nursing facilities; nursing assistant training and competency evaluation programs; maintenance of registry of evaluated competent nursing assistants; and

WHEREAS, the United States Department of Health and Human Services (hereinafter referred to as "HHS") has issued regulations concerning the survey and certification of NFs, ICFs/MR, and NF/IMDs, as required by Title XIX of the Social Security Act (hereinafter referred to as the "Act"), which impose duties and responsibilities upon DHS and MDH; and

WHEREAS, in order to fulfill these duties and responsibilities, DHS and MDH must delineate functions to be performed and the responsibilities of the departments in the survey and certification of NFs, ICFs/MR and NF/IMDs for participation in the Minnesota Medical Assistance Program (Minnesota Statutes Chapter 256B); and

WHEREAS, MDH is the agency designated under Section 1902(a)(33) of the Act as the agency responsible for determining whether facilities meet the requirements for participation in MA as NFs, ICFs/MR or NF/IMDs; and

WHEREAS, MDH is the agency designated pursuant to Minnesota Statutes, Section 144.0722 to establish and administer resident reimbursement classifications; and

WHEREAS, MDH is the agency designated pursuant to Minnesota Statutes, Section 144A.61, to implement portions of P.L. 100-203, the Omnibus Budget Reconciliation Act of 1987, (hereinafter referred to as "OBRA") regarding nursing assistant training and competency evaluations and establishment of a nursing assistant registry; and

DHS/MDH Interagency Agreement #

WHEREAS, MDH has an agreement dated October 1, 1985 with HHS to carry out the provision of Section 1864 of the Social Security Act, Title XVIII, Section E(3) of which expressly permits MDH to utilize the services, facilities and records of any other state or local governmental agency or private agency to carry out the functions authorized by the agreement; and

WHEREAS, Minnesota Statutes, Section 144A.61, Subdivision 1, allows the Commissioner of MDH to contract with outside parties for purpose of implementing nursing assistant training and competency evaluation programs;

NOW, THEREFORE, be it resolved that DHS and MDH agree to perform the necessary functions to carry out these responsibilities, which shall include the following items:

1. MDH will coordinate with the DHS contract manager, the sharing of communications from the Centers for Medicare and Medicaid Services (CMS)/HHS which represent a change in policy or procedure with regards to the performance of contracted duties. MDH shall provide to DHS; copies of any written notices, letters or other documents received from HHS, and provide notice and opportunity to attend all meetings and exit conferences between MDH and CMS/HHS concerning compliance with federal requirements, state agency performance monitoring activities, training, funding issues and functions performed pursuant to this contract. For purposes of this agreement, MDH compliance with notification requirements shall be met if notice is provided to the designated contract manager.
2. The Facility and Provider Compliance Division of MDH shall conduct surveys in accordance with federal requirements for NFs, ICFs/MR (except in those exempt by virtue of participation in a federally authorized waived demonstration project), and NF/IMDs to determine provider eligibility and certification under MA. The requirements specified in 42 CFR 431.610(f) and (g) and the Enforcement Regulations as specified in 42 CFR 488.300-488.456 shall be complied with as part of the survey and compliance process. The implementation of these regulations shall be consistent with the State Plan.
3. MDH shall provide staff in sufficient number (subject to budgetary limitations) and of composition and qualifications to ensure that the requirements of this agreement are met. If sufficient resources are not available to meet these staffing requirements, MDH shall notify DHS, and a coordinated effort will be made to obtain sufficient resources from the state legislature and/or CMS.
4. MDH shall impose remedies as specified in 42 CFR for facilities that do not meet the requirements of participation in the Medicaid program. For those facilities where sanctions for non-compliance with Medicaid requirements have been recommended or imposed, such as; termination,

DHS/MDH Interagency Agreement

state monitoring, denial of payment, or the imposition of monetary penalties, MDH shall concurrently notify the DHS contract manager and the facility. MDH shall notify the DHS contract manager within two business days, in cases where a facility has been notified of an immediate jeopardy.

5. The Facility and Provider Compliance Division of MDH shall conduct at least one annual review for purposes of quality review or medical review, in each Medicaid-certified NF and NF/IMD. A summary report of the results of each review shall be made available to DHS. In addition, the Case Mix Review (hereinafter referred to as "CMR") section shall review the timeliness of the care plan reviews for compliance with 42 CFR 456.280. The Facility and Provider Compliance Division shall establish resident reimbursement classifications that conform to the rules established by the Commissioner of DHS. Pursuant to Minnesota Statutes, Section 144.0722, MDH shall also conduct approximately 30% or up to 3,200 targeted audits of classifications at facilities annually. MDH shall transmit to DHS, reports and data relating to the administration of classifications.

6. Information obtained in any MDH review and/or survey of a NF, ICF/MR, or NF/IMD relative to noncompliance with the applicable rules, federal regulations or procedures shall be routinely provided to DHS.

7. MDH shall be responsible for collecting and providing to DHS, data, reports, and information related to; survey, certification and compliance, case mix and quality review, minimum data set (MDS), nursing assistant registry, and/or other activities covered under this agreement, as may be deemed useful and necessary by DHS. Data shall be provided in formats and according to schedules mutually agreed upon by DHS and MDH. This data shall be utilized to develop outcome and performance measurements, administer contracts for services as mandated by Minnesota Statutes 256B.434 and 256B.435, and otherwise determine value, results, and outcomes for Long-Term Care purchasing. Minimum data set data sharing will be in accordance with the CMS/MDH Data Use Agreement.

8. MDH will provide to DHS, within available resources, policy consultation and/or support on issues such as MDS implementation and usage, and other federal and/or state legislative initiatives related to the provisions of this agreement.

9. MDH shall conduct up to 16 facility reviews annually of NF/IMDs or potential NF/IMDs in order to determine if these facilities must be declared IMDs or have such declaration revoked. DHS will designate the facilities to be reviewed 90 days prior to the beginning of the next quarter. The total work time for the reviews will not exceed 25 working days in each fiscal year and will utilize IMD classification criteria. DHS will provide in-service training on IMD classification criteria to MDH staff assigned to perform the reviews.

10. DHS is the single state agency responsible for monitoring the review of the utilization of care and services under that state plan for MA. DHS shall monitor the timeliness of physician certification

DHS/MDH Interagency Agreement

in NFs, ICFs/MR, NF/IMDs, and of physician recertification plans in ICFs/MR.

11. DHS shall be responsible for issuing Medicaid provider agreements to NFs, ICFs/MR, and NF/IMDs certified by MDH. MDH shall maintain records of all information and reports used in determining whether facilities meet federal requirements of participation. MDH shall retain information in accordance with federal and state records retention schedules. MDH shall provide DHS summary information concerning provider certifications. Information obtained by any DHS audit process of a NF, ICF/MR, or NF/IMD relative to noncompliance with licensing and/or certification requirements shall be routinely provided to MDH.

12. MDH shall be responsible for conducting periodic educational programs, within available resources, for the staff, residents (or their representatives), and representative organizations of facilities referred to in this agreement, to present current regulations, procedures and policies on the survey, certification and enforcement process.

13. MDH shall designate state-approved nursing assistant competency evaluation programs for persons seeking employment in certified nursing facilities. MDH may contract with outside vendors for a statewide program to administer the state-approved competency evaluation program. MDH shall review any preliminary agreement with an outside vendor, with DHS prior to the final execution of the contract. MDH or its contractor shall review and re-approve nursing assistant training and competency evaluation programs at a frequency and using a methodology consistent with federal regulations. MDH shall establish procedures for and maintain the security of the state-approved competency evaluation program.

14. MDH or its contractor shall maintain a registry of individuals who have satisfactorily completed an approved nursing assistant competency evaluation program or an approved nursing assistant training and competency evaluation program, in accordance with federal regulations.

15. MDH shall conduct an investigation of complaints regarding nursing facility resident abuse, neglect or misappropriation of resident property, by a nursing assistant providing services in a nursing facility, in accordance with 42 CFR 488.335. MDH shall report each confirmed case of resident abuse, neglect or misappropriation of resident property by a nursing assistant to the Minnesota Nursing Assistant Registry within 10 days of substantiation of the incident.

16. MDH shall conduct an investigation of complaints regarding nursing facility resident abuse, neglect or misappropriation of resident property, by any other individual providing services in a nursing facility, in accordance with 42 CFR 488.335. MDH shall report each confirmed case of resident abuse, neglect or misappropriation of resident property, by any other person providing services in a nursing facility, to the appropriate licensing authority or board.

DHS/MDH Interagency Agreement #

17. MDH shall establish and implement a nursing facility case mix transition plan to move away from the current case mix review system to a system based on the federally required Minimum Data Set (MDS). The system will be fully operational by July 1, 2002 and no later than January 1, 2003.

18. DHS shall establish a separate account for the collection and disbursement of funds related to the imposition of civil monetary penalties (CMP's). This account shall be monitored and reviewed during the regular contract review process. The Joint Committee, under authority of the CMS, and consisting of appointed representatives from DHS, MDH and the Office of Ombudsmen, shall make decisions related to the implementation and use of these funds.

19. Financing procedures are:

A. MDH shall submit to DHS estimates for anticipated costs (federal and state share) for all survey and certification activities and case mix review, quality assurance and level of care activities, nursing assistant training and competency evaluation program and nursing assistant registry activities. State fiscal year estimates shall be provided for each fiscal year beginning July 1 and ending June 30, to be submitted to DHS no later than April 1st, for the next fiscal year. MDH shall submit to DHS estimates for the anticipated federal share of costs for all case-mix review section activities, and survey and certification activities, on a quarterly basis, to be submitted no later than 60 days prior to the beginning of each quarter.

These costs shall include all costs attributable to the general expenses of MDH in order to carry out the functions of this contract, but shall exclude the costs of licensing activities. These costs shall be prepared in accordance with all applicable federal procedures and provisions, including those contained within the State Operations Manual, sections 4500, and 4544. All estimated costs, reports of expenditures and other reports shall be prepared in accordance with budget and accounting methods adopted by the State of Minnesota. MDH shall furnish or make available information on any accounts, expenditures or reports as requested by DHS or as may be necessary for audit purposes to verify that expenditures were made only for purposes authorized by this contract.

B. DHS shall provide funds to MDH within appropriated amounts and utilizing available federal financial participation (FFP) match rates for reasonable and necessary costs associated with carrying out the provisions of this contract. DHS shall be responsible for securing the necessary Medicaid state share for funding survey and certification activities attributable to Medicaid facilities, and the Medicaid portion of survey and certification activities attributable to dually certified facilities. DHS will make adequate provisions for obtaining the necessary Medicaid state share of survey and certification activities. Should CMS impose fiscal or programmatic sanctions against the survey and certification program which

DHS/MDH Interagency Agreement

are attributable to inadequate state Medicaid funding, DHS shall be responsible for addressing these issues.

DHS shall pay MDH invoices within 30 days of submission. Funds shall be paid in accordance with generally accepted accounting methods and procedures adopted by the State of Minnesota and federal financing procedures. In the event that there are changes in FFP, the state's financial obligations, or other requirements under provisions of this contract, MDH and DHS will review this contract. Through the course of this contract, MDH and DHS will identify any savings, or additional funding needed to meet the requirements of the Medicaid program. DHS and MDH may amend any portion of this contract by mutual agreement.

- C. The state-appropriated amount for survey and certification, inspection of care or medical Review, case mix review targeted audits, and the OBRA nursing assistant administrative activities as specified in this contract for the period beginning July 1, 2001 and ending June 30, 2003 is \$ 7,175,000. The estimated allocation of contract funds for SFY 2002 is \$ 3,748,000. The estimated allocation of contract funds for SFY 2003 is \$ 3,427,000, or the unspent balance remaining under the contract. All monies not expended in SFY 2002 shall be carried forward into SFY 2003.

20. This interagency agreement constitutes the whole agreement between the parties, and it is mutually understood that no alterations or variations to the terms of this agreement shall be valid unless amendments hereto are made in writing and agreed to by the signatories of this contract, or their successors in office. If this agreement is terminated, any funds paid to MDH under the provisions of this agreement that have not been expended or encumbered in accordance with the provisions of this agreement before the due date of termination and any property purchased with funds paid to MDH under provisions of this agreement shall be accounted for in accordance with standards established by the State of Minnesota governing disposition of such property and funds.

21. MDH hereby designates Linda Sutherland, Director of the Facility and Provider Compliance Division, and DHS hereby designates Robert Held, Division Director of Continuing Care for the Elderly, or their successors in office, as authorized agents for the purpose of responsibility for the supervision of work involved under this contract. DHS hereby designates Munna Yasiri, or her successor/s in office, as manager for the responsibility of administering this interagency agreement and monitoring provisions contained herein, for compliance with all applicable regulations. These persons and/or their designees and successors in office shall schedule and hold meetings at least quarterly to discuss the implementation of the activities covered by this agreement.

22. For the purposes of executing its responsibilities and to the extent set forth in this interagency agreement, MDH and DHS employees and agents shall have access to private data maintained by

DHS/MDH Interagency Agreement

MDH and DHS to the extent necessary to carry out their respective responsibilities under this agreement and applicable federal and state requirements. The Commissioner of Health is the responsible authority for data maintained by the Department of Health. The Commissioner of Human Services is the responsible authority for data maintained by the Department of Human Services. MDH and DHS accept responsibility for providing supervision and training to their agents and employees to ensure compliance with the Data Practices Act. No private or confidential data collected, maintained, or used in the course of performance of this agreement shall be disseminated except as authorized by statute, either during the period of the agreement or thereafter.

23. DHS and MDH agree that each party will be responsible for its own acts and the results thereof, to the extent authorized by law, and shall not be responsible for the acts of any others and the results thereof. MDH and DHS liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.376, and other applicable laws.

24. This agreement shall be read in a manner consistent with Title XIX of the Social Security Act and with Minnesota Statutes, Chapters 256B, 144 and 144A, and the regulations and rules promulgated thereunder, and with policy bulletins, directions or other materials issued by HHS.

25. This agreement shall be effective beginning July 1, 2001, or upon the date it is fully signed and executed by all parties, whichever date occurs later. On that date, the contract # 424341 effective July 1, 1999 between DHS and MDH, which relates to the same subject as this agreement shall be terminated.

26. This agreement shall expire on June 30, 2003, unless an amendment is executed to extend the term.

DHS/MDH Interagency Agreement #

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed, intending to be bound thereby.

Minnesota Department of Human Services
(State Medicaid Agency)

By: Michael O'Keefe

Date: 8/1/01

Minnesota Department of Health
(State Survey Agency)

By: Hamid Shukur

Date: 8/7/01

Office of Attorney General

By: Kirsten M. Olsen

Date: Aug 24, 2001